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No. 03-632

Supreme Court, U.S.
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In the
Supreme Court of the United States

OCTOBER TERM, 2003

JOSEPH W. DUBOIS, JR. and SABINE G. DUBOIS,
PETITIONERS,

v.

WEST GATE VILLAGE ASSOCIATION,
RESPONDENTS.

On Petition for Writ of Certiorari to the State of New Hampshire Supreme Court

REPLY BRIEF TO BRIEF IN OPPOSITION

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REPLY BRIEF

The Respondent extensively cites Supreme Court Rule 10 in its Brief in Opposition. However, despite such reference the Respondent omits an important sentence contained in Rule 10.

> "The following although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers"

Therefore, it is not critical that the Petitioner claim present any of the three reasons set forth in Rule 10.

The Respondent alleges on page 4 of its Brief in Opposition that:

> "The court specially ruled on the Petitioners motion concerning subject matter jurisdiction in its order of August 13, 2002. See Petition page A-6."

The Petitioners submit the court ruled incorrectly concerning subject matter jurisdiction. No court can assert jurisdiction over subject matter when the state statutes limit that jurisdiction. *U.S. v. Will*, 449 U.S. 200 (1980)

In light of the quotation from *Bradley v. Fisher*, 13 Wall 335 (1871) which reads;

> "Where there is clearly no jurisdiction of the subject matter any authority is a usurped authority, and for its exercise of such authority, when the court of jurisdiction is known to the Judge, no excuse is permissible,"

It is unclear how the Respondent can claim that the *Bradley* case is not a case involving a clear absence of jurisdiction over the subject matter.

The Respondent on page 8 of its Brief in Opposition states:

> "In contrast, the Petitioners ignore cases that show that the Federal right of due process only arises where there is a fundamental absence of any and all right of the State to take cognizance of the cause as a matter of state law".

However, Counsel for Respondent fails to cite any authority for such a statement. Further, its counsel alleges:

> "However, where the contentions are confined to jurisdiction in the sense of a duty to rightfully decide those subjects to which the judicial power of a State extends, there is no protection by the due process clause of the Fourteenth Amendment."

Again Respondent Counsel fails to set forth any authority in support of such a contention. Not only does counsel fail to cite authority, he fails to explain fully the meaning of the allegation and how it applies to this case.

Respondents Counsel's last sentence on page 8 is non-applicable. The Petitioner does not claim the Court committed an error of law in "The performance of its duties and within the scope of authority of the Court".

Petitioner contends that because of the State Statute which limits the Court's authority, the Court did not possess the authority for the Court to commit an error of law.

"It is undisputed that a judge must be cognizant of any given effect to the statutes and rules of his jurisdiction, *Miller v. Wellingham*, 400 F. 2d 873 (1968) *In re: SGRO* 310 A. 2d 459 (N.J. 1973).

The law in New Hampshire is clear and long standing:

> "Where exclusive jurisdiction is expressly conferred upon a Court, no other tribunal may exercise such jurisdiction. Waivers cannot confer subject matter jurisdiction where it does not exist, and any action taken by the Court without jurisdiction is void and may be challenged at any stage of the proceedings *Cooperman v. MacNeil,* 91 N.H. 42 (1940) and is presently the same. *Close v. Fisette*, 776 A. 2d 131 (2001)"
>
> > "A decision rendered by a Court without subject matter jurisdiction is void."

In fact the United States Supreme Court is so protective of Constitutional rights of parties before the Courts that it has determined that a judge who acts on subject matters over which the Court lacks jurisdiction loses his judicial immunity. *Stump v. Sparkman,* 435 U.S. 354, 98 S. Ct. 1099 (1978) *Bradley v. Fisher*, 13 Wall 335 (1871).

The United States Supreme Court has determined:

> "When the statute claim to restrict authority is not merely technical but embodies a strong policy concerning the proper administration of judicial business, this Court has treated the alleged defect as "jurisdictional" and agreed to consider on direct review even though not raised at the earliest practicable opportunity."

It is submitted the requirements of R.S.A. 491:7 and R.S.A. 502-A:14i, which limit jurisdiction of claims under $1,500. to the District and Municipal Courts are not merely technicalities but reflect the State's policy concerning the proper administration of judicial business.

It is unclear to Petitioners that Respondent cannot comprehend the connection between their claim that N.H. Superior Court acted beyond the jurisdictional limits set by N.H. Law and the Fourteenth Amendment to the U.S. Constitution which states in part:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, *deprive any person of life, liberty or property without due process of law,* nor deny to any person within its jurisdiction the equal protection of law." (emphasis added)

Clearly, for a Court to violate the state statutes which limit subject matter jurisdiction and enters an order concerning a subject matter over which it has no jurisdiction deprives a person of property in that due process, contrary to the position of the Respondent.

Respectfully Submitted,

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